

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division
Civil Action No. 3:11-cv-00597-FDW-DCK**

**THE FAIRPOINT
COMMUNICATIONS, INC. *ET AL.*
LITIGATION TRUST,**

Plaintiff,

vs.

**VERIZON COMMUNICATIONS, INC.,
NYNEX CORPORATION, VERIZON
NEW ENGLAND, INC., CELCO
PARTNERSHIP d/b/a VERIZON
WIRELESS, AND VERIZON
WIRELESS OF THE EAST LP,**

Defendants.

PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Mark Holliday, solely in his capacity as Litigation Trustee (the "Trustee") of The FairPoint Communications, Inc. *et al.* Litigation Trust (the "Trust"), and the Trust (collectively "Plaintiff") moves the Court for leave to file a Second Amended Complaint, consistent with the Case Management Order entered on March 21, 2012. Plaintiff attaches the proposed Second Amended Complaint hereto as Exhibit "A".

Plaintiff desires to amend its Complaint for two primary reasons:

- (1) To withdraw the Count III claims against Celco Partnership d/b/a Verizon Wireless and Verizon Wireless of the East LP, consistent with Plaintiff's Response to Defendants' Joint Motion to Dismiss Amended Complaint.
- (2) To add Verizon Information Technologies L.L.C. ("VIT") as a party against which Plaintiff seeks to avoid and recover for the alleged fraudulent transfer claims relating to the Transition Services Agreement.

Adding the Defendants' affiliate, VIT, as a defendant cures an alleged pleading deficiency that Defendants asserted in their Joint Motion to Dismiss Amended Complaint.

Filing of the Second Amended Complaint will not cause undue delay in discovery, which has just commenced, and it will not necessitate altering the Case Management Order. There is no bad faith or dilatory motive on the part of Plaintiff.

Indeed, the second reason Plaintiff requests leave to file the Second Amended Complaint --to add VIT as a defendant--is what Defendants assert needs to occur to have the proper Verizon corporate entity as the defendant for the portion of the counts relating to the Transition Services Agreement.

In support of this Motion, Plaintiff files its Memorandum of Law in Support of its Motion for Leave to File a Second Amended Complaint.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff leave to file its Second Amended Complaint, and such other or additional relief as the Court deems just and proper.

Respectfully submitted, this 29th day of May, 2012.

/s/ Jonathan D. Sasser

Jonathan D. Sasser

ELLIS & WINTERS LLP

N.C. State Bar No. 10028

PO Box 33550

Raleigh, North Carolina 27636

Telephone Number: (919) 865-7000

Facsimile Number: (919) 865-7010

jon.sasser@elliswinters.com

J. Wiley George (TX Bar. No. 07805445)

Robin Russell (TX Bar No. 17424001)

Charles B. Hampton (TX Bar No. 00793890)

Scott Locher (TX Bar No. 12457500)

ANDREWS KURTH LLP

600 Travis, Suite 4200

Houston, Texas 77002

Telephone Number: (713) 220-4200

Facsimile Number: (713) 238-7192

wileygeorge@andrewskurth.com

rrussell@andrewskurth.com

charleshampton@andrewskurth.com

scottlocher@andrewskurth.com

Paul N. Silverstein (NY Bar No. PS 5098)

ANDREWS KURTH LLP

450 Lexington Avenue

New York, New York 10017

Telephone Number: (212) 850-2800

Facsimile Number: (212) 850-2929

paulsilverstein@andrewskurth.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on May 29, 2012, I conferred in good faith with counsel for Defendants regarding Plaintiff's Motion for Leave to File a Second Amended Complaint and the relief sought therein, and counsel stated that Defendants do not consent to the motion.

By: /s/ Jonathan D. Sasser
Jonathan D. Sasser

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were electronically filed today with the United States District Court, Western District of North Carolina using the Court's CM/ECF system which caused copies to be served upon the following counsel of record.

Robert E. Harrington

Andrew W. J. Tarr

ROBINSON BRADSHAW & HINSON, P.A.

101 North Tyron Street, Suite 1900

Charlotte, North Carolina 28246

rharrington@rbh.com

atarr@rbh.com

Lee Ann Stevenson

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, New York 10022

leeann.stevenson@kirkland.com

Philip D. Anker

WILMER CUTLER PICKERING HALE & DORR LLP

399 Park Avenue

New York, New York 10022

philip.anker@wilmerhale.com

This the 29th day of May, 2012.

By: /s/ Jonathan D. Sasser
Jonathan D. Sasser